IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18542 of 2004

Between:

Dasari Nageswara Rao S/o Sri Anjaiah,
R/o Door No. 29-16-24, Opp to sibar Channel Prakasam Road, Governorpet,
Vijayawada, Krishna District

..... PETITIONER

AND

1 The Commissioner of Police, Vijayawada Commissionerate, Vijayawada, Krishna District
2 The Station House Officer, Nunna Rural Police, Station, Vijayawada, Krishna District

3. Maddula Vivekananda, S/o.Sri Panduranga Rao, 41 years,

R/o. Vijayawada, Krishna District.

(3rd respondent impleaded as per orders in W.P.M.P.No.25475 of

2004, dated 19-10-2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents 1 and 2 pressurizing the petitioner to vacate the premises at R.S. No. 785/3, to the extent of ac. 1-79 cents at Nunna Village, Vijayawada Rural, Krishna District and interfering with personal liberty of the petitioner without any cause as illegal, arbitrary and violation of Article 21 of the Constitution of India and consequently direct the Respondents 1 and 2 to forbear from interfering with the personal liberty of the petitioner.

Counsel for the Petitioner :MR. KUNCHEAM MAHESWARA RAO

Counsel for the Respondents 1 & 2: GP FOR HOME

Counsel for the 3rd respondent : Mr. K.V. Bhanu Prasad

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.18542 OF 2004

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ORDER :

The petitioner claims to be a lessee in respect of the premises at RS.No.785/3 at Nunna village, Vijayawada Rural, Krishna District under a registered lease agreement dated 24-06-2004 executed by one P.Nagakishore and P.Bhargava Varma. It is stated that the lease is valid upto 23-06-2007 and that he obtained the possession of the property in question on 24-06-2004 from his lessors and thereafter he has been in exclusive possession and enjoyment of the same.

This writ petition is filed alleging that the respondents 1 and 2 are interfering with his possession and coercing him to vacate the premises without there being any justifiable reason and accordingly seeking a declaration that the action of the respondents is arbitrary and illegal and in violation of Article 21 of the Constitution of

India.

This Court while directing notice to the respondents by order dated 11-10-2004 granted interim direction not to interfere with the possession of the petitioner in respect of the premises in question without following due process of law.

Thereafter, though no counter is filed by the respondents 1 and 2, one Maddula Vivekananda got himself impleaded as party respondent and filed a counter-affidavit stating that he purchased the property in question under registered sale deeds in the year 1988 from Sri Bommareddy Ramireddy and Sambi Reddy and since then he has been in possession and enjoyment of the same. It is further stated that though one Arepalli Ramakoteswara Rao who is a rowdy-sheeter on the file of Payakapuram Police Station, Vijayawada and some others claimed title to the property in question and consequently proceedings under Section 144 (5) of Cr.P.C. were initiated, ultimately, all the said proceedings were dismissed and a finding was recorded by the Sub-Collector that they were not in possession of the property in question for the past many years. Thereafter, the alleged lessors of the petitioner P.Nagakishore, Bhargava Varma and Smt. Sridevi claiming to be the owners of the property filed civil suits in the Court of the IV-Additional Junior Civil Judge, Vijayawada. Initially temporary injunction was granted, but the same was vacated on 19-07-2004. Subsequently, the writ petitioner, claiming to be the lessee in respect of the same property, filed O.S.No.2506 of 2004 on the file of IV-Additional Junior Civil Judge, Vijayawada and obtained ex parte order of injunction against the third respondent on 12-07-2004. However, on contest, after hearing the third respondent herein, the injunction was vacated recording a finding that the writ petitioner failed to prove that his lessors or their predecessors-in-title are having right and possession of the suit schedule lands. It was also held that the documents filed by the third respondent established that his vendors have got title and he is in possession of the suit schedule land. Against the said order, dated 18-08-2004 the petitioner preferred C.M.A.No.82 of 2004 on the file of the II-Additional Senior Civil Judge, Vijayawada. However, he did not even choose to seek suspension of the order of the trial Court nor sought any injunction against the third respondent. It is further stated that after the order of injunction was vacated, since the writ petitioner and his supporters were trying to enter into the land in question, he lodged a report with the second

respondent on 07-10-2004 requesting protection and immediate action. In pursuance of the same, the second respondent took steps to protect the possession of the third respondent by preventing A.Ramakoteswara Rao and others including the writ petitioner. At this stage, the petitioner filed this writ petition without making the third respondent, who is the contesting defendant in the suit, as party to the writ petition. It is alleged that under the guise of the interim orders granted by this Court, the writ petitioner is trying to enter into the land and also taking steps to change the nature of the land.

I have heard the learned Counsel for both the parties and perused the material on record.

It is to be noted that the petitioner did not dispute the fact that O.S.No.2506 of 2004 is pending in the Court of the IV-Addl. Junior Civil Judge, Vijayawada in respect of the property in question and that the application filed by him for temporary injunction was dismissed. It is also not in dispute that even though the petitioner filed an appeal against the said order, it is yet to come up for hearing and so far no orders have been passed varying the order passed by the learned IV-Addl. Junior Civil Judge, Vijayawada dismissing the application for injunction. Thus, the entire matter is seized by the competent Civil Court and as on today there is a finding against the petitioner as to the possession claimed by him. In the circumstances, I do not see any reason to grant the relief as prayed for since the entire case of the petitioner in this writ petition is based on the plea that he is in possession of the property in question. As rightly contended by the learned Counsel for the third respondent, in view of the fact that the writ petition was filed without impleading the contesting defendant as party to the suit, the writ petition does not appear to be bona fide.

Though the learned Counsel for the petitioner contended that apart from the alleged interference with the possession in respect of the property in question, the respondents 1 and 2 are also interfering with the personal liberty of the petitioner, in the absence of any specific plea in the affidavit, it is not necessary for this Court to go into the said issue.

Accordingly, the Writ Petition is dismissed. No costs.

Needless to mention that the interim order granted on 11-10-2004 shall stand vacated.

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29th October, 2004.

Gbs

To

1 The Commissioner of Police, Vijayawada Commissionerate, Vijayawada, Krishna District
2 The Station House Officer, Nunna Rural Police, Station, Vijayawada, Krishna District

3.2CCs to G.P. for Home, High Court of AP Bldgs, Hyderabad (OUT).

4.2CD copies